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May 13, 2022

VIA ELECTRONIC FILING
The Honorable Jocelyn G. Boyd
Chief Clerk and Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia SC 29210

Re: South Carolina Energy Freedom Act (H.3659) Proceeding Initiated Pursuant to S.C. Code Ann. § 58-37-40 and Integrated Resource Plans for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Docket Nos. 2019-224-E & 2019-225-E

Petition for Rehearing and/or Reconsideration

Dear Ms. Boyd:

Enclosed for filing on behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, the "Companies") please find the Joint Petition for Rehearing and/or Reconsideration of Order No. 2022-332. The Companies respectfully request the Commission reconsider its decision to select Portfolio A2 and instead affirm the Companies' selection of Portfolio C1 for the reasons set forth in the Companies' Petition.

By copy of this letter, I am serving all parties of record via electronic mail.

Kind regards,

Samuel J. Wellborn

Enclosure

cc: Parties of record
David Stark, Staff Counsel, Public Service Commission of South Carolina
F. David Butler, Special Counsel, Public Service Commission of South Carolina

BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NOS. 2019-224-E & 2019-225-E

In the Matter of: South Carolina Energy Freedom Act (H.3659) Proceeding Initiated Pursuant to S.C. Code Ann. § 58-37-40 and Integrated Resource Plans for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC	**JOINT PETITION OF DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC FOR REHEARING AND/OR RECONSIDERATION OF ORDER NO. 2022-332**

Pursuant to S.C. Code Ann. §§ 1-23-380, 58-27-2150 and S.C. Code Ann. Regs. 103-825(A)(4) and applicable South Carolina and federal law, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP," and together with DEC, the "Companies") hereby petition the Public Service Commission of South Carolina ("Commission") to reconsider a portion of its rulings in Order No. 2022-332 (the "Order"), issued on May 5, 2022. As explained below, the Commission should reconsider its decision to select Portfolio A2 and instead affirm the Companies' selection of Portfolio C1 because the Commission's decision was plainly arbitrary and capricious, and because there are significant policy reasons that should compel the Commission to reconsider its decision. In particular, (i) the Commission's Order contains no reasoning to support its *sua sponte* selection of Portfolio A2; (ii) the Commission's decision unreasonably conflicts with the Commission's own directives in Order No. 2021-447; (iii) the Commission's decision unreasonably conflicts with the Commission's decisions in the Dominion Energy South Carolina, Inc. ("Dominion") Integrated Resource Plan ("IRP") proceeding; (iv) utilities and stakeholders need clear and consistent direction from regulators in resource planning

in order to mitigate risk and maximize value for customers and the state; (v) the Commission's policy decision to override the Companies' selection of Portfolio C1 and instead select Portfolio A2 carries undue risk; and (vi) the Commission's selection of Portfolio A2 conflicts with the efficiencies of dual-state resource planning. For these reasons, the Companies urge the Commission to reconsider its decision to select Portfolio A2 and instead affirm the Companies' selection of Portfolio C1.

EXECUTIVE SUMMARY

The Commission's policy decision to override the Companies' selection of Portfolio C1 and instead select Portfolio A2 is arbitrary and capricious, not supported by law or fact, ignores clear direction in Act 62 to consider foreseeable conditions and risks in integrated resource planning, and is not supported by meaningful analysis from the Commission. No party advocated for Portfolio A2, and the Commission's justification does not adequately explain how or why Portfolio A2 is superior to Portfolio C1. It is appropriate for the Commission to reconsider its order on that basis alone, but also because with more retirements planned for the nation's aging coal fleet, the businesses that supply coal are increasingly distressed, and coal market volatility has increased due to a number of factors, as explained in more detail below. Portfolio C1 mitigates foreseeable risks posed by continued reliance on emissions-intensive resources by recognizing accelerated retirements of the Companies' aging coal units; supports the Companies' commitment to the prosperity of South Carolina communities; and helps to attract and grow business investment and jobs within the State. The Companies were clear in their Modified IRPs that, while the exact resource additions and retirements in Portfolio C1 would need to be re-evaluated in future dockets, the accelerated retirement of the Companies' remaining coal plants was an important planning goal. South Carolina stands to become more prosperous, as an even more attractive destination

for business relocation and expansion, should the Companies continue making progress towards emissions reductions at the pace contemplated in Portfolio C1.

The Commission's decision to override the Companies' selection of Portfolio C1 and instead select Portfolio A2 also conflicts with the efficiencies of dual-state resource planning. Specifically, Portfolio A2 is out of line with the ongoing, continued energy transition of the DEC and DEP systems to serve the Companies' customers in South Carolina and North Carolina. Portfolio A2 selects resources under resource planning principals that do not take into consideration the likely near- and long-term costs and risks of continued reliance on emissions-intensive resources. In contrast, Portfolio C1 supports the Companies' already ongoing energy transition by relying on a diverse portfolio of technologies with lower carbon intensity to mitigate the known long-term risks posed by continued reliance on emissions-intensive resources. Portfolio C1 also provides for continued power system reliability and ensures continued access to capital at reasonable rates for the benefit of customers. The Companies' systems were originally designed, and have since been operated, as joint systems across South Carolina and North Carolina—a fact acknowledged in Act 62, which recognizes the two-state nature of the Companies' systems in its references to the Companies' balancing areas, as explained further in this Petition. The dual-state systems have produced significant benefits for customers in both states, not the least of which is the fact that South Carolina DEC retail customers bear only 24% of system costs and DEP retail customers bear only 10% of system costs, meaning that South Carolina customers are only partially financially responsible for the Companies' investments, including those located in the State, irrespective of the state in which the investment is located.

While the Companies ask that the Commission reconsider its decision because the selected resource portfolio is not supported by any party and was arrived at through arbitrary and capricious

decision-making, more than that, the Companies seek reconsideration because of the implications of Portfolio A2 for so many stakeholders in South Carolina. Industry, customers, and utilities need clear, reasoned direction from the Commission in resource planning, and the Companies believe that the Commission should reconsider its decision in this case and instead accept the Companies' 2020 Modified IRP Portfolio C1.

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I. BACKGROUND

These proceedings involve the Companies' first comprehensive IRPs submitted under Act 62 of 2019. On September 1, 2020, the Companies filed their 2020 IRPs with the Commission, which contained a set of six resource portfolios. Following publication of notice, ten parties

intervened and the Commission held a hearing from April 26 to May 5, 2021. Sixteen witnesses presented direct testimony, nine witnesses testified in rebuttal, and eleven witnesses offered surrebuttal testimony.

Through Order No. 2021-447, the Commission ordered the Companies to select a single portfolio from the six portfolios presented in their 2020 IRPs on which they intend to base their resource decisions. Specifically, the Commission stated that "Duke will make a variety of resource decisions over both the short-term and long-term; those decisions—though they could change over time—should be reflected in Duke's preferred portfolio." Order No. 2021-447 at 11 (emphasis added). For that reason, the Commission directed the Companies "to select a preferred resource portfolio in their Modified 2020 IRPs." Order No. 2021-447 at 12.

On August 27, 2021, the Companies filed their 2020 Modified IRPs, which contained nine supplemental portfolios and analyses. In compliance with the Commission's order, the Companies identified Portfolio C1 as their selected resource plan. In the Companies' view, Portfolio C1 was, and currently is, "the most reasonable and prudent means of meeting their energy and capacity needs" at the time of the Commission's review, recognizing that the plan will evolve with new and changing circumstances. As required by S.C. Code Ann. § 58-37-40(C)(3), the Office of Regulatory Staff ("ORS") reviewed the Companies' Modified IRPs and issued a report addressing Portfolio C1 as the Companies' selected plan. In its report, ORS recommended that the Companies' preferred portfolio, C1, "be used as the base assumption in future proceedings. If there are changes in assumptions or circumstances, then those can be considered as adjustments to the Preferred Portfolio at the time of the future proceeding." ORS Report at 10. While ORS identified three matters that the Companies "should continue to evaluate and examine further over

time," ORS concluded that the Companies "sufficiently met all of the requirements set by the Commission Order for the Modified IRP." ORS Report at 20.

Further, as provided in S.C. Code Ann. § 58-37-40(C)(3), the parties engaged in discovery and filed comments, the central focus of which was the Companies' selected C1 plan. While the Companies and intervenors quibbled over whether Portfolio C1 or C2 is superior, no party advanced or advocated for Portfolio A2, let alone presented any detailed analysis of the merits, or lack thereof, of Portfolio A2. The Companies complied with Order No. 2021-447 and with S.C. Code Ann. § 58-37-40(C)(3) by "submit[ting] a revised plan addressing concerns identified by the commission and incorporating commission-mandated revisions to the integrated resource plan to the commission for approval."

In spite of the Companies' compliance with the Commission's order and applicable law, on December 14, 2021, the Commission issued a directive—containing no rationale at all—directing that the Companies "use Portfolio A2 as the selected base plan for their respective modified 2020 Integrated Resource Plan." Directive, Docket Nos. 2019-224-E & 2019-225-E (Dec. 14, 2021). On May 5, 2022, five months later, the Commission issued Order No. 2022-332, directing that the Companies use Portfolio A2 as the selected base plan, simply because "many of the issues raised by the intervening parties concern the selection of the Duke Companies' C1 Portfolio as the Duke Companies' preferred Plan." Order at 10. The Order went on to state that, because the Commission has mandated the use of Portfolio of A2, intervenors' issues with Portfolio C1 are disposed of. *Id.* Contrary to the requirements of S.C. Code Ann. § 58-37-40(C)(3), the Commission provided no rationale for its selection of Portfolio A2, particularly when no party advocated for its selection, nor did it engage with any of the significant differences between Portfolios A2 and C1 except to note that Portfolio A2 reflected (1) "natural gas price

blends in the gas price forecasting methodology"; and (2) "NREL ATB Low figures for battery storage costs." *Id.* at 11.

This petition for reconsideration and/or rehearing follows.

II. STANDARD

S.C. Code Ann. § 58-27-2150 provides that a party may seek "rehearing in respect to any matter determined in such proceedings and specified in the application for rehearing, and the Commission may, in case it appears to be proper, grant and hold such rehearing." Under the Commission's regulations, "[a] Petition for Rehearing or Reconsideration shall set forth clearly and concisely" the following: (1) "factual and legal issues forming the basis for the petition," (2) "alleged error or errors in the Commission's order," and (3) the statutory provision or other authority upon which the petition is based." S.C. Code Ann. Regs. 103-825(A)(4)(a)–(c). "The purpose of the petition for rehearing and/or reconsideration is to allow the Commission to rehear and/or reexamine the merits of issued orders, pursuant to legal or factual questions raised about those orders by parties in interest, prior to a possible appeal." *In re S.C. Elec. & Gas Co.*, Order No. 2013-5 at 1-2, Docket No. 2012-203-E (Feb. 14, 2013). "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (1985). Set forth and explained below are the errors in the Commission's order.

III. GROUNDS FOR RECONSIDERATION OR REHEARING

The Commission should reconsider its decision to select Portfolio A2 and instead affirm the Companies' selection of Portfolio C1 for several independent reasons as explained below.

A. The Commission's decision was plainly arbitrary and capricious.

i. The Commission's Order contains no reasoning to support its *sua sponte* selection of Portfolio A2.

In its Order, the Commission offered no reasoning or analysis to support its selection of Portfolio A2. Instead, the Commission simply catalogued various intervenors' comments about C1 and said "to the extent that the intervening parties asserted that Portfolio C1 is objectionable, those assertions have been addressed and disposed of by the Commission's rejection of C1 as the Preferred Plan." Order at 10. But the Commission failed to explain how A2 assuaged any of those concerns or why it was the "most reasonable and prudent means of meeting the electrical utility's energy and capacity needs" at the time of review. S.C. Code Ann. § 58-37-40(C)(2).

It is well-settled that "[t]he findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings. Implicit findings of fact are not sufficient." *Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) (internal citation omitted). To the contrary, when "material facts are in dispute," the Commission "must make specific, express findings of fact." *Id.* And "a recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues." *Id.*

For nearly four decades, the Supreme Court of South Carolina has had an unbroken record of upholding the principles set forth in *Able*. In *Hamm v. Southern Bell Telephone and Telegraph Co.*, the Court found the Commission's findings ran afoul of *Able* because the order contained "[n]o more than a recital of testimony and a general conclusion." 302 S.C. 132, 134–35, 394 S.E.2d 311, 312 (1990). The same was true in *Porter v. South Carolina Public Service Commission*, where the Court reiterated *Able* and found "the mere recitation of general factors

without describing their relevancy to th[e] case[,] as well as no explanation as to what and why certain portions of the expert testimony were adopted[,] cannot serve as a substitute for a finding of facts." 332 S.C. 93, 99–100, 504 S.E.2d 320, 323 (1998). Just last year, the Court reversed and remanded because Commission's Order did "not contain sufficient findings of fact or analysis to allow [it] to evaluate the merits of [certain] issues on appeal." *In re Blue Granite Water Co.*, 434 S.C. 180, 205 n.14, 862 S.E.2d 887, 900 n.14 (2021).

So too here. The Commission's failure to explain its ruling is particularly glaring in this case. In its Order, the Commission simply outlined the parties' various positions and ended with the conclusory statement that "[u]nder considerations of the statutory requirements, Order No. 2020-832, and Order No. 2021-447, the Commission concludes that the Duke Companies must select Portfolio A2 as the Preferred Plan." Order No. 2022-332 at 12. But S.C. Code Ann. § 58-37-40(C)(2), adopted by the General Assembly as part of Act 62 of 2019, requires that in order to approve an IRP the Commission must make the finding that the proposed IRP is "the most reasonable and prudent means of meeting the electrical utility's energy and capacity needs as of the time the plan is reviewed." To guide the Commission in making that determination, section 58-37-40(C)(2) provides a list of seven factors that must be balanced by the Commission. The Commission's Order does not make the finding that Portfolio A2 is the most reasonable and prudent means of meeting the energy and capacity needs facing DEC and DEP, and it does not explain how its selection of Portfolio A2 balances the seven statutory factors prescribed by the General Assembly to inform the Commission's review of IRPs. The Commission's Order thus adopts Portfolio A2 as the preferred portfolio for the Companies to use in planning without making the required finding or undertaking the required analysis. Such *ipse dixit* analysis violates the requirement of section 58-37-40(C)(2) and constitutes reversible error under well-established

precedent requiring the Commission to explain its rulings. *See Able*, 290 S.C. at 411, 351 S.E.2d at 152; *Hamm*, 302 S.C. at 136, 394 S.E.2d at 313; *Porter*, 332 S.C. at 100; S.E.2d at 323; *In re Blue Granite Water Co.*, 434 S.C. at 205 n.15, 862 S.E.2d at 900 n.14.

ii. The Commission's decision unreasonably conflicts with the Commission's own directives in Order No. 2021-447.

The Commission's decision to select its own resource plan and override the Companies' selection of Portfolio C1 is arbitrary and capricious because it unreasonably conflicts with the Commission's clear directive in Order No. 2021-447 that the *Companies* select a resource plan. The Companies complied with that directive, and the selected resource plan was the subject of ORS's and intervenors' comments filed pursuant to the IRP statute. But the Commission, upon its own initiative, selected an entirely different resource plan that was not advocated for by any party in the proceeding. This was arbitrary and capricious, and the Commission's decision-making was not based upon the record of the comments filed pursuant to S.C. Code Ann. § 58-37-40(C)(3), which is legal error under the Administrative Procedures Act. *See* S.C. Code Ann. § 1-23-380(5)(d).

The statute governing the IRP modification and review process is straightforward:

> If the commission modifies or rejects an electrical utility's integrated resource plan, the electrical utility, within sixty days after the date of the final order, shall submit a revised plan addressing concerns identified by the commission and incorporating commission-mandated revisions to the integrated resource plan to the commission for approval. Within sixty days of the electrical utility's revised filing, the Office of Regulatory Staff shall review the electrical utility's revised plan and submit a report to the commission assessing the sufficiency of the revised filing. Other parties to the integrated resource plan proceeding also may submit comments. No later than sixty days after the Office of Regulatory Staff report is filed with the commission, the commission at its discretion may determine whether to accept the revised integrated resource plan or to mandate further remedies that the commission deems appropriate.

S.C. Code Ann. § 58-37-40(C)(3) (emphasis added). One of the principal "concerns identified by the commission" was that the Companies had not selected a resource plan. The Commission explained that "Duke will make a variety of resource decisions over both the short-term and long-term; those decisions—though they could change over time—should be reflected in Duke's preferred portfolio." Order No. 2021-447 at 11 (emphasis added). For that reason, to support the Companies' prospective resource decisions, the Commission explicitly directed the Companies "to select a preferred resource portfolio in their Modified 2020 IRPs." Order No. 2021-447 at 12.

The ORS's review of the Modified IRPs and intervenors' comments were all focused on the resource plan selected by the Companies pursuant to the Commission's directive, and certainly no party advocated for or even supported the selection of Portfolio A2. Indeed, the above-quoted section of Act 62 evidences the General Assembly's intent for ORS to review and other parties to comment on the proffered resource plan, an intent that was subverted by the Commission changing that resource plan. For its part, ORS concurred with the Commission's position that the Companies should select a single resource plan and went further to "recommend[] that the Preferred Portfolio [i.e., Portfolio C1] the Company identifies in the IRP should also be used as the base assumption in future proceedings." ORS Report at 10.

Pursuant to Act 62, the Companies filed Modified IRPs "addressing the concerns identified by the commission and incorporating commission-mandated revisions to the integrated resource plan" pursuant to S.C. Code Ann. § 58-37-40(C)(3) and Order No. 2021-447; the ORS filed a report and intervenors filed comments addressing Portfolio C1; and then the Commission, on its own initiative, selected Portfolio A2. The Commission's *sua sponte* selection of resource plan A2, particularly after its directive to the Companies to select their own resource plan, is textbook arbitrary and capricious decision-making. *See Deese*, 286 S.C. at 184–85, 332 S.E.2d at 541

(stating a decision is arbitrary when made at pleasure, without adequate determining principles, and governed by no fixed rules or standards). The Commission's selection of Portfolio A2 and accompanying Order do not reflect the procedure set forth in the IRP statute—*i.e.*, the Commission did not "accept the revised [IRP] or [] mandate further remedies"—and conflict with the Commission's own mandate for the Companies to select their own plans for resource decision-making.

iii. The Commission's decision unreasonably conflicts with the Commission's decisions in the Dominion IRP proceeding.

The Commission should also grant reconsideration because imposing a resource plan that does not account for carbon risk, while approving a resource plan for Dominion that does account for carbon risk, is arbitrary and capricious.

A tribunal's judgment must be "guided by sound legal principles." *Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021) (quoting *United States v. Burr*, 25 F. Cas. 30, 35 (C.C.D. Va. 1807) (Marshall, C.J.)). As the U.S. Supreme Court has recognized, judicial "[d]iscretion is not whim," and the fair application of judicial discretion according to sound, consistent standards "helps promote the basic principle of justice that like cases should be decided alike." *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 139 (2005) (emphasis added). Likewise, as expressed in *Deese*, the Commission is barred from making decisions "at pleasure," that is, making one decision in one proceeding and a wholly and unreasonably inconsistent one under a closely analogous set of facts and circumstances. 286 S.C. at 184–85, 332 S.E.2d at 541.

After the Commission rejected Dominion's 2020 IRP and required "significant, material modifications," Dominion submitted a modified IRP selecting resource plan 8 ("RP8"), which was lower carbon according to ORS. In fact, ORS labeled it as being the "lowest carbon [emitting] plan." ORS Report at 23, Docket No. 2019-226-E (May 24, 2021). In its order approving

Dominion's selection of RP8, issued on June 18, 2021, the Commission found that RP8 was the "most reasonable and prudent means of meeting the electrical utility's energy and capacity needs." Order No. 2021-429 at 17, Docket No. 2019-226-E (June 18, 2021). In short, the Commission approved Dominion's selected plan—its lowest carbon-emitting plan—by unanimous vote on June 2, 2021.

In the case of DEC and DEP, the Companies chose Portfolio C1, which—while taking into account the accelerated closure of the Companies' remaining coal plants located in North Carolina—was mid-range in terms of carbon reduction as between Portfolios A1 and F1. *See* Table 1, ORS Report at 6. Yet the Commission—in a vote only 6 months after approving RP8 for Dominion—overrode the Companies' selection of C1 and instead imposed resource plan A2, with no accounting for potential reliability, operational, or cost risk associated with continued reliance on emissions-intensive resources, even though Act 62 directs the Commission to take these types of risks into account, as explained below. Although ORS evaluated Dominion's and the Companies' respective plans consistently, the Commission's decisions were diametrically opposed. Under these circumstances, the Commission's decision was arbitrary and capricious because these "like cases" were not decided alike, and the Commission's decision to override the Companies' selection of Portfolio C1 and instead impose Portfolio A2 was made at pleasure and in a manner wholly and unreasonably inconsistent with its decision on the Dominion IRP.

The irreconcilability of the Commission's clear direction for the Companies to choose a resource plan—coupled with the Commission's *sua sponte* imposition of a least cost and "full carbon" resource plan when it had just approved a "lowest carbon" portfolio for Dominion—was arbitrary and capricious decision-making that should be reconsidered.

B. There are significant policy reasons that should compel the Commission to reconsider its decision.

i. Utilities and stakeholders need clear and consistent direction from regulators in resource planning in order to mitigate risk and maximize value for customers and the state.

In stark contrast to arbitrary and capricious decision-making, in the context of long-term resource planning, utilities—along with the businesses, customers, and other stakeholders that are impacted by resource decision-making—need clear and consistent direction from regulators. Business risk is amplified, which means borrowing costs for customers increase and access to capital for utilities decreases, when utilities operate in an uncertain environment. Indeed, this Commission has recognized that Supreme Court precedent requires "[t]hat the rate of return . . . support the utility's credit and ability to raise capital needed for on-going utility operations; and . . . the rate of return should be set with due regard to current business and capital market conditions affecting the utility." Order No. 2003-38 at 66-67, Docket No. 2002-223-E (Jan. 31, 2003) (citing *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679, 692-73 (1923); *Southern Bell Telephone and Telegraph Co. v. South Carolina Public Service Commission*, 270 S.C. 590, 595, 244 S.E. 2d 278, 281 (1978); *see also Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692 (1923) (holding that public utilities are entitled to a return on their investments equal to that being made by other businesses "which are attended by corresponding risks and uncertainties"). Perhaps more importantly, utilities' significant resource investment decisions have broad and long-term impacts, and the Commission's decisions can either drive or impair economic development in the state. Stated differently, the Commission's decisions can help determine whether or not South Carolina will be a leader in drawing investment and economic drivers to the state.

The Companies, along with other peer utilities in the Southeast and across the country, are engaging in a significant and transformative period of energy transition. Indeed Santee Cooper—South Carolina's state-owned utility—even acknowledges that its own IRP is a "roadmap to transform its power supply portfolio" and that it "represents a dramatic evolution from a coal-heavy generating portfolio to one more dependent on sustainable and lower-emitting resources." Santee Cooper IRP at 2, Docket No. 2022-23-E (Jan. 11, 2022). The resource mix of utilities within the state and across the country are transforming, and decisions about what resources will be selected to take the place of retiring resources and where utilities will choose to site those resources are being made now. As one example, DEC is currently implementing an uprate project at the Bad Creek hydro facility, increasing the capacity of the facility by 335 megawatts at a cost of $230 million, to be completed by 2023. But even this investment and the associated added capacity, while material, are quite small as compared to the Companies' long-term resource needs. Relatedly, on February 23, 2022, DEC filed a pre-application document ("PAD") and Notice of Intent to Relicense the Bad Creek facility with the Federal Energy Regulatory Commission.[1] The PAD references the *possibility* of building a second powerhouse at Bad Creek. A second powerhouse at Bad Creek, if pursued, would represent a very significant investment in South Carolina, growing DEC's tax payments in the state, creating a myriad of related jobs in upstate South Carolina, and supporting the energy transition that is already underway.

The majority of the Companies' remaining coal plants are nearing the end of their economic lives and becoming riskier to operate; thus, retirement is a given. What will replace that substantial amount of firm, dispatchable capacity, and where those resources will be located, will be informed by decisions made within the respective regulatory climates of South Carolina and

[1] *See* DEC Letter, Docket No. 2019-224-E (Mar. 4, 2022).

North Carolina. Significant transmission development, new investment in pumped storage hydro, advanced nuclear projects, solar and battery storage investments, and other large project and jobs investments will be at play as part of resource planning in the Carolinas. These investments *could* mean billions of dollars of investment for the South Carolina tax base and jobs in the state, not to mention opportunities for all energy industry participants including solar developers. Decisions by this Commission between now and when the Companies begin to site replacement resources and projects will be critical in influencing the "what" and the "where" of resource development and the associated capital investment and long-term economic impact. But to maximize the value of these investments for their customers, the Companies need clear and consistent direction from this Commission. For these reasons and the others provided herein, the Companies request that the Commission reverse its imposition of Portfolio A2 and instead affirm the Companies' selection of resource Portfolio C1.

ii. The Commission's policy decision to override the Companies' selection of Portfolio C1 and instead select Portfolio A2 carries undue risk.

The Commission's policy decision to override the Companies' selection of Portfolio C1 and instead select Portfolio A2 carries undue risk. Carbon reduction goals are common to many electric utilities because such goals recognize the long-term reliability and fuel assurance risks of coal, customers' increasing demands for cleaner energy, the state's economic development goals, and the need to maintain adequate access to capital, among other utility planning and operational priorities. Again, Santee Cooper is even "focused on developing [resource] plans that will significantly reduce the carbon footprint of its generation fleet and enhance the diversity of its resource portfolio to allow Santee Cooper to adapt to changing market and economic conditions." Santee Cooper IRP at 10, Docket No. 2022-23-E (Jan. 11, 2022). Importantly, in its enactment of the Energy Freedom Act, Act No. 62 of 2019 ("Act 62"), the General Assembly recognized the

need to account for risk in developing and reviewing IRPs, specifically requiring that IRPs include sensitivity analyses that account for "fuel costs, environmental regulations, and other uncertainties or risks," and requiring that the Commission consider commodity price risks and "other foreseeable conditions" in its review of IRPs.[2]

As discussed in the Companies' Modified IRPs, coal is an increasingly risky fuel source. With more retirements planned for the nation's aging coal fleet, the businesses that supply coal are increasingly distressed, and coal market volatility has increased due to a number of factors, including deteriorated financial health of coal suppliers due to declining domestic demand for coal; uncertainty around proposed, imposed, and stayed regulations for power plants; and increasing financing costs for coal producers.[3] These issues are compounded by rail transportation providers' limited and diminishing operational flexibility. This lack of transportation flexibility results in increased difficulty in adapting to changes in scheduling demand needed due to changes in coal's generation burn. Although the Companies continue to manage coal supply assurance risks, the supply chain is expected to further deteriorate over time.[4] These long-term declines in supply uncertainty and operational flexibility ultimately create long-term fuel supply assurance risks for customers.

Portfolio C1, and resource planning that accounts for the risks of reliance upon emissions-intensive resources, supports the Companies' commitment to the prosperity of South Carolina communities, and helps to attract and grow business investment and jobs within the state. In 2020, Duke Energy was instrumental in attracting $712 million in capital investment and 1,038 new jobs

[2] S.C. Code Ann. § 58-37-40(B)(1)(e), (C)(2).

[3] DEC Modified IRP at 13; DEP Modified IRP at 13.

[4] DEC Modified IRP at 21-22; DEP Modified IRP at 20-21.

to the state of South Carolina.[5] As active partners in economic development, the Companies are acutely aware of the fact that commercial and industrial businesses are increasingly citing the emissions intensity of electricity generation as a selection criterion in the search for future sites for operations. Leading South Carolina employers have clear mandates to reduce the emissions intensity of their operations and, in the Companies' own recent experience, nearly every South Carolina economic development prospect has specifically requested information regarding the Companies' generation mix, plans for the future, and renewable investment, and nearly all ask whether they can be served exclusively with carbon-free resources. Carbon emissions are clearly top-of-mind for businesses choosing whether or not to locate to a particular state, and South Carolina stands to become more even more prosperous, as an even more attractive destination for facility relocation and expansion, should the Companies be permitted to continue making progress towards emissions reductions in resource planning. Further, industry relocation to South Carolina and the expansion of existing businesses will lower electric rates for all customers by spreading the Companies' fixed capital costs over a larger customer base.

While industry leaders are looking for utility partners with increasingly emissions-free systems, investors who purchase utility stocks and lend to utilities are—at the same time—demanding that the companies they invest in hold themselves accountable for long-term, sustainable operations. Investing with an eye toward environmental, social, and governance ("ESG") principles, or ESG-focused investing, has grown in recent years.[6] This impacts access to, and the cost of, equity and debt securities, and has also become a material consideration among

[5] Duke Energy 2021 ESG Report at 44, https://desitecoreprod-cd.azureedge.net/_/media/pdfs/our-company/esg/2021-esg-report-full.pdf?la=en&rev=39232657c7f74bf48fb0360adffd0bb7.

[6] U.S. Securities and Exchange Commission, Environmental, Social and Governance (ESG) Funds – Investor Bulletin (Feb. 26, 2021), https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins-1.

the credit rating agencies. An example of this is the Glasgow Financial Alliance for Net-Zero, which launched in April 2021. Within its first year, the membership to this consortium grew to 450 firms from 45 countries, representing approximately $130 trillion in total investments[7] – 40% of all globally banked assets. The primary purpose of the alliance is to align net zero goals and the lending and investment activities of large financial institutions. Many of the Companies' largest equity and debt investors have joined this initiative and are taking a more proactive role in evaluating each utilities' approach toward a clean energy future. For many investors, the evaluation of a company's decarbonization plan is not just to meet the investor's own climate goals and expectations, but it is part of the investors' overall risk assessment of a company.[8] For example, BlackRock, one of the largest investment firms in the world, and Duke Energy Corporation's second largest shareholder, notes that "[c]limate risk presents significant investment risk—it carries financial impacts that will reverberate across all industries and global markets, affecting long-term shareholder returns, as well as economic stability."[9]

As investors evaluate their portfolios and make decisions on where to allocate capital, the pace of companies' decarbonization plans is becoming more critical. Investors have a variety of investment opportunities available to them, and they require a return commensurate with the risk they incur. If a utility's climate risk is deemed to be elevated, it can directly impact customers in several ways. First, investors will require a higher return, increasing the cost of capital and customer rates. Second, investors may allocate less capital to certain companies or ultimately

[7] Glasgow Financial Alliance for Net Zero, https://www.gfanzero.com/about (last visited May 13, 2022).

[8] Tr. Vol. 1, pp. 224.19-224.20.

[9] BlackRock, Climate Risk and the Global Energy Transition at 1, https://www.blackrock.com/corporate/literature/publication/blk-commentary-climate-risk-and-energy-transition.pdf (Feb. 2022).

choose not to invest. This further impairs a company's access to capital, which could limit its ability to execute capital projects for the benefit of its customers.

An assessment of DEC's and DEP's creditworthiness is performed by two major credit rating agencies, Standard & Poor's ("S&P") and Moody's Investors Service ("Moody's"), and results in their credit rating. The credit rating agencies consider both qualitative and quantitative factors, and they are increasingly focused on environmental issues. In ratings released by S&P in November 2021, DEC and DEP were both rated "negative" on environmental issues, indicating that environmental factors are having a materially negative impact on the creditworthiness of the Companies.[10] Included among the negative risk factors was "climate transition risks," with S&P stating that decarbonization will "rapidly modify the economics of [] projects and hence their future cash flows, cost of capital, and access to financing."[11] As risk increases, credit quality declines and ratings can come under pressure. As credit quality declines, investor requirements for higher returns increase, meaning customers will pay more for capital. To ensure reliable and cost-effective service for customers, access to capital at reasonable rates is critical. This requires utilities to consider how their decarbonization plans impact debt and equity investors' evaluation of them.

Carbon reduction goals that address investor concerns over longer term risk increase a utility's ability to access capital through various market conditions. In fact, as investors and credit rating agencies have expanded their assessment criteria to include climate and environmental issues, the Securities and Exchange Commission has proposed rule changes

[10] S&P Global, ESG Credit Indicator Report Card: Power Generators, https://www.spglobal.com/_assets/documents/ratings/research/esg-rc-for-public-site-power-generators.pdf (Nov. 19, 2021).

[11] *Id.* at 4.

> that would require registrants to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about climate-related risks also would include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks.[12]

Reductions in the use of carbon-intensive generation across the Companies' joint system not only reflect the Companies' commitment to the economic development and prosperity of the State of South Carolina, but also reflect a risk-informed determination to ensure long-term reliability and resiliency, fuel supply assurance, and continued access to capital for utility infrastructure investments at competitive rates. As discussed in the Modified IRP, Portfolio C1 takes these issues into account by "prioritiz[ing] retirement of the Company's existing coal fleet in the most expeditious manner to accelerate carbon reduction, while ensuring affordability and reliable service for customers."[13] Instead, the selection of Portfolio A2, which excludes consideration of carbon emissions, ignores all of these risks. For these reasons, the Companies urge the Commission to reverse its imposition of Portfolio A2 and instead affirm the Companies' selection of Portfolio C1.

iii. The Commission's selection of Portfolio A2 conflicts with the efficiencies of dual-state resource planning.

The Commission's decision to override the Companies' selection of Portfolio C1 and instead select Portfolio A2 conflicts with the efficiencies of dual-state resource planning. As explained in the Modified IRPs, Portfolio C1 is consistent with the Companies' planned transition away from emissions-intensive generation resources due to the likelihood of more stringent

[12] U.S. Securities and Exchange Commission, *SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors* (Mar. 21, 2022), https://www.sec.gov/news/press-release/2022-46.

[13] DEC Modified IRP at 13; DEP Modified IRP at 13.

environmental regulations, the growing potential for carbon policy, and the ongoing constraints on coal supply.[14] All of the Companies' remaining 9,300 MW of coal-fired generation is located in North Carolina. The Companies expect to retire their North Carolina coal plants in the near future, and the associated timeline for transitioning to new resources will be evaluated in future proceedings. As with a utility commission's decision whether to grant a certificate of public convenience and necessity, even within a dual-state system, each state has autonomy over the regulation of utility service within their respective state boundaries, autonomy which may have impacts within the neighboring state. Portfolio C1, the resource plan selected by the Companies, projects a 66% reduction in carbon emissions by 2030 from the 2005 baseline and net zero emissions by 2050 and is directionally consistent to the 70% carbon reduction goal in place in North Carolina, keeping the Companies on a path to cleaner energy while prioritizing continued affordable prices and reliable power.

The Companies' systems were originally designed, and have since been operated, as joint systems across South Carolina and North Carolina. Indeed, the General Assembly recognized the Companies' dual-state systems—balancing authority areas that stretch across state lines—in Act 62.[15] The Companies' generation and transmission networks would never have been designed this way had both states' regulatory bodies not supported the development of these joint systems, and the dual-state systems have produced significant benefits for customers in both states. For example, the Companies' customers in South Carolina and North Carolina have all benefitted from (and paid their allocated cost to build and operate) significant carbon-free energy located in South

[14] DEC Modified IRP at 13; DEP Modified IRP at 13.

[15] *See* S.C. Code Ann. § 58-37-60(A) (authorizing a study of renewable energy and emerging energy technologies "based on the balancing areas of each electrical utility"); S.C. Code Ann. § 58-41-20(E)(2) (authorizing the creation of competitive procurement programs for renewable energy and capacity "within the utility's balancing authority area"); S.C. Code Ann. § 58-41-30(E) (permitting renewable energy facilities as part of a utility's voluntary renewable energy program to be located "within the utility's balancing authority").

Carolina, including from six South Carolina-sited nuclear units in Darlington, York, and Oconee Counties, for which the Companies are pursuing subsequent license renewal; various hydro facilities in South Carolina, including pumped storage facilities at Bad Creek and Lake Jocassee; and approximately 4,000 MW of solar generation owned or purchased by the Companies across the Carolinas.

Another significant benefit of dual-state system planning—with South Carolina DEC retail customers bearing only 24% of system costs and DEP retail customers bearing only 10% of system costs—is that South Carolina customers are not exclusively financially responsible for costs incurred to build generation capacity. Instead, such capital-intensive efforts are equitably spread across a large base of customers, allowing *all* customers to benefit from greater economies of scale. This cost-sharing approach will become increasingly important given that the Companies' North Carolina-sited coal plants represent approximately 9,300 MW of firm dispatchable generation that will need to be replaced.

IV. CONCLUSION

In sum, the Commission should reconsider Order No. 2022-332 to address and remedy the issues described in this petition. DEC and DEP urge the Commission to reverse its selection of Portfolio A2, and to affirm the Companies' selection of Portfolio C1.

Dated this 13th day of May, 2022.

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BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NOS. 2019-224-E & 2019-225-E

In the Matter of: South Carolina Energy Freedom Act (H.3659) Proceeding Initiated Pursuant to S.C. Code Ann. § 58-37-40 and Integrated Resource Plans for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC	**CERTIFICATE OF SERVICE**

The undersigned, Lyndsay McNeely, Paralegal for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, does hereby certify that she has served the persons listed below with a copy of the Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Rehearing and/or Reconsideration of Order No. 2022-332 in the above-captioned proceedings via electronic mail at the addresses listed below on May 13, 2022.

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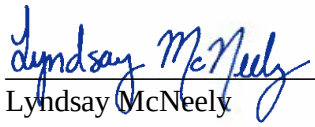
Dated this 13th day of May, 2022.



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